

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8154 OF 2004

M/s.Dinesh Constructions ...Petitioner

Versus

Chandrakant Krishna Chavan & Ors. ...Respondents

Shri A.A.Kumbhakoni i/by Shri T.D.Deshmukh for the
Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 28, 2007.

P.C.:

1. Heard the learned counsel appearing for the Petitioner. By this Petition under Article 227 of the Constitution of India, the Petitioner has taken an exception to order dated 19th June, 2004 passed by the learned trial Judge.

2. It will be necessary to refer to the facts of the case in brief. The dispute is about the award dated 18th July, 1991 passed under the Arbitration Act, 1940. The Petitioner is not a party to the Award.

3. The said Award was filed in the Court and in the proceedings under the said Act of 1940 the Petitioner made an Application under Rule 10(2) of Order I of the Code of Civil Procedure, 1908 praying that the Petitioner may be impleaded as a party to the

proceedings. It is contended in the said Application that one of the property subject matter of the Award was purchased by a Co-operative Society. It is stated that the Petitioner is having an interest in the said property. It is contended that Opponent Nos.1 to 3 in the pending proceedings have no right in respect of property known as "Shailesh Property" and they had no right to refer the dispute to the Arbitration.

4. The learned trial Judge by the impugned order rejected the Application. The learned trial Judge observed that the Petitioner is not a party to the Award and hence, the Award cannot be binding on him.

5. After having heard the submissions of the learned counsel appearing for the Petitioner, I find that no case for interference has been made out. The only issue involved before the trial Court is whether the Award dated 18th April, 1991 shall be made the rule of the Court. As stated earlier, the Petitioner is admittedly not a party to the arbitral proceedings. Considering the scope of proceedings under section 14 of the said Act of 1940, the learned trial Judge has rightly taken a view that the Application made by the Petitioner cannot be entertained. It is difficult to find fault with the approach of the trial Court.

6. In paragraph 6 of the impugned order, the learned Judge has observed that Opponent Nos.1 to 3 in the proceedings have an undivided one third right, title and interest in the properties. It is obvious that the said observation cannot be treated as a finding recorded by the trial Court as regards rights of the Petitioner in respect of the property. The learned trial Judge has rightly observed that the Award is not binding on the Petitioner. It, therefore, follows that even if the Award is made a rule of the Court the same will not bind the Petitioner.

7. Subject to what is stated above, the impugned order deserves to be confirmed. The Petition is accordingly rejected. It is made clear that no adjudication is made as regards rights of the Petitioner in respect of the property in dispute and the questions relating to the said rights will have to be decided in the appropriate proceedings.

JUDGE